

MEMO ENDORSED



JAMES E. JOHNSON

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

PHILIP S. FRANK
phone: (212) 356-0886
fax: (212) 356-1148
email: pfrank@law.nyc.gov

December 6, 2019

BY ECF & EMAIL

Honorable Katherine Polk Failla
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007
Failla_NYSDChambers@nysd.uscourts.gov

Re: Kent Davis v. The City of New York, et al., 17-CV-5793 (KPF)

Dear Judge Failla:

I am the attorney in the office of the Corporation Counsel of the City of New York assigned to represent Defendants City of New York and Crystal Pierre (collectively, "City Defendants") in the above-referenced matter, wherein Plaintiff alleges that his parental rights were violated as the result of the removal of his daughter on or about February 23, 2008, stemming from Plaintiff's having repeatedly stabbed the child's mother in front of the then three-year-old child. I write to respectfully request an extension of time for City Defendants to serve and file their renewed motion to dismiss the remaining state law claims.

On July 20, 2018, City Defendants moved to dismiss the Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6). By Opinion and Order dated February 26, 2019, Your Honor dismissed all of Plaintiff's federal claims against City Defendants. (Dkt. No. 93). The Court denied without prejudice City Defendants' motion to dismiss the state law claims or, in the alternative, not to exercise supplemental jurisdiction over the state law claims on the understanding that if, after the remaining Defendants (Gloria Avery, Erica Willheim, and Amy Milano, none of whom are City employees) had appeared, or had their cases otherwise resolved by dismissal or default judgment proceedings, no federal claims remained, City Defendants could renew their motion. (*Id.*) By letter dated October 3, 2019, City Defendants respectfully requested permission to renew their motion to dismiss the remaining state law claims, or, in the alternative for the Court to decline to exercise supplemental jurisdiction over the state law claims. (Dkt. No. 109). By Order dated October 4, 2019, the Court set a briefing schedule for City Defendants' renewed motion to dismiss, with City Defendants' moving papers currently due on December 9, 2019. (Dkt. No. 114).

I respectfully request that the Court grant City Defendants a 35-day extension of time, or to January 13, 2020, to serve and file their renewed motion. The reason for the requested enlargement is due to multiple motions, conferences, and discovery obligations that I have at the beginning of this month, as well as an oral argument scheduled for this week that I was not aware of at the time the current briefing schedule was set. As a result I am unable to finish drafting the City Defendants' contemplated motion at this time.¹

This is City Defendants' first request for an extension of time to serve and file their motion papers. I have not been able to speak with Plaintiff to obtain his consent to this request because Plaintiff, who is proceeding *pro se*, has not listed his telephone number on the docket.

I thank the Court for its consideration of this request.

Respectfully submitted,

/s/

Philip S. Frank
Assistant Corporation Counsel

cc: All counsel of record (via ECF)

Mr. Kent Davis (via first class mail)
Plaintiff *Pro Se*
123 West 135th St, 5C
Manhattan, New York 10030

Application GRANTED. City Defendants must file and serve their renewed motion on or before **January 13, 2020**. Plaintiff's opposition, if any, shall be due on **February 28, 2020**. Defendants' reply, if any shall be due **March 27, 2020**. No further extensions will be granted.

SO ORDERED.

Dated: December 6, 2019
New York, New York



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

¹ I acknowledge that on behalf of other City Defendants in another matter, I submitted a similar request to the Court on the same basis.